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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953 *54*

No. ~~000~~ *36*

UNITED STATES OF AMERICA, APPELLANT,

VS.

LEE SHUBERT, JACOB J. SHUBERT, MARCUS HEI-
MAN, UNITED BOOKING OFFICE, INCORPO-
RATED, SELECT THEATRES CORPORATION,
L.A.B. AMUSEMENT CORPORATION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

FILED MARCH 18, 1954

Probable jurisdiction noted April 26, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 647

UNITED STATES OF AMERICA, APPELLANT,

vs.

LEE SHUBERT, JACOB J. SHUBERT, MARCUS HEI-
MAN, UNITED BOOKING OFFICE, INCORPO-
RATED, SELECT THEATRES CORPORATION,
L.A.B. AMUSEMENT CORPORATION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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1-2 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

[Title omitted]

Stipulation re substitution of copy of complaint and ruling thereon—(omitted in printing).

3 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

Civil Action No. 56-72

UNITED STATES OF AMERICA, PLAINTIFF,

v.

LEE SHUBERT, JACOB J. SHUBERT, MARCUS HEIMAN, UNITED BOOKING
OFFICE, INCORPORATED, SELECT THEATRES CORPORATION L.A.B.
AMUSEMENT CORPORATION, DEFENDANTS

COMPLAINT—Filed February 21, 1950

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings his action against the defendants named herein and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. All the defendants inhabit, maintain their principal offices, transact business, and are found within the Southern District of New York.

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II

Description of Defendants

3. Lee Shubert and Jacob J. Shubert (hereinafter referred to as the Shuberts) are made defendants herein. The Shuberts are brothers and are residents of the City of New York, New York.

Through the defendant Select Theatres Corporation and other corporations controlled by them, the Shuberts operate or participate in the operation of approximately 37 theatres in various States of the United States, produce and invest in numerous legitimate attractions, and own and rent rights to various attractions. The Shuberts together with the defendant Marcus Heiman are in active charge of the management, direction, and operation of the defendant United Booking Office, Incorporated. Lee Shubert is vice-president and a director of the defendant United Booking Office, Incorporated.

4. Marcus Heiman, a resident of the City of New York, New York, is made a defendant herein. Through the defendant L.A.B. Amusement Corporation and other corporations in which he has a financial interest, Marcus Heiman operates or participates in the operation of five theatres in various States of the United States and has invested in numerous legitimate attractions. Marcus Heiman together with the defendants Lee Shubert and Jacob J. Shubert is in active charge of the management, direction, and operation of the defendant United Booking Office, Incorporated. Marcus Heiman is president and a director of the defendant United Booking Office, Incorporated.

5. United Booking Office, Incorporated (hereinafter referred to as UBO) is made a defendant herein. UBO is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 234 West 44th Street, in the City of New York, New York. With the exception of the defendant Select Theatres Corporation and its subsidiary, Select Operating Corporation, UBO is the only booking office in the United States engaged in the business of booking legitimate attractions in theatres throughout the United States. It has also engaged in the financing of the production of many attractions. UBO has outstanding 500 shares of capital stock of which 250 shares are owned by the defendant Marcus Heiman and 250 shares by the defendant Select Theatres Corporation. The defendants Marcus Heiman, Lee Shubert, and Jacob J. Shubert are in active charge of the management, direction, and operation of UBO.

6. Select Theatres Corporation (hereinafter referred to as Select) is made a defendant herein. Select is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 234 West 44th Street, in the City of New York, New York. It has approximately 19 subsidiary companies and 4 affiliated companies, some of which are presently inactive. Select and its subsidiaries operate approximately 19 theatres in various States of the United States. Select, directly and through subsidiary corporations, arranges bookings for several theatres in its chain, produces and invests in the production of legitimate attractions, and owns and rents rights to various attractions. The defend-

ants Lee Shubert and Jacob J. Shubert own all the preferred stock and over 80% of the common stock of Select and are in active charge of its management, direction, and operation.

7. L.A.B. Amusement Corporation (hereinafter referred to as LAB) is made a defendant herein. LAB is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 234 West 44th Street, in the City of New York, New York. It operates three theatres in three States and has invested in the production of numerous legitimate attractions. The defendant Marcus Heiman owns all the stock of LAB and is in active charge of its management, direction, and operation.

III

Definition of Terms

8. Each of the following terms as used herein has the meaning described below:

9. *Legitimate attractions*—stage attractions performed in person by professional actors. Such attractions include plays, musicals, and operettas. The term ordinarily does not include stock company attractions, vaudeville, burlesque, bands, individual dancers, dance groups, concerts, and vocal or instrumental presentations.

10. *Theatre*—a theatre which customarily presents legitimate attractions.

11. *Producer*—any person, partnership, association or corporation engaged in the production of legitimate attractions.

12. *Presentation*—the operation of a theatre or theatres and the exhibition of legitimate attractions therein.

13. *Operator*—any person, partnership, association or corporation engaged in presentation.

14. *Booking*—the arrangements, generally made through a booking office, between producers and operators for the routing and presentation of legitimate attractions and the fixing of playing dates. The term includes entering into agreements for the presentation of legitimate attractions.

15. *Shubert-operated theatre*—a theatre which is owned or operated by the defendants Shuberts or either of them or by any of the corporations controlled by them.

7 16. *Heiman-operated theatre*—a theatre which is owned or operated by the defendant Marcus Heiman or by any of the corporations controlled by him.

17. *Franchise*—a contract between an operator and the defendant UBO whereby UBO is appointed exclusive booking agent for the operator.

18. *Affiliated theatre*—a theatre which had or has a franchise with the defendant UBO or a similar working arrangement with any of

the defendants herein or with any of the corporations controlled by them.

19. *Independent theatre*—a theatre which is not an affiliated theatre or in which the defendants have no financial interest.

20. *Try-out town*—a city where a legitimate attraction is presented for the purpose of judging audience reaction and eliminating observed deficiencies, prior to presentation in New York City.

21. *Road-show town*—a city where a legitimate attraction is presented after its presentation in New York City. A road-show town may also be a try-out town.

22. *Theatrical season*—the period from September of one year through May of the next.

IV

Description of the Business

23. The three branches of the legitimate theatre business herein relevant are production, booking, and presentation.

24. Production involves (1) the assembling of the elements of a legitimate attraction, including a script, financial backing, actors, stage hands, designers, advertising agents, scenery, costumes, lighting and music; (2) rehearsing, to weld the parts into a legitimate attraction suitable for presentation; (3) arranging for the booking and presentation of the attraction in a try-out town or towns; 8 in New York City; and in road-show towns; and (4) transporting the entire cast and scenery to try-out towns, New York City and road-show towns throughout the United States to fulfill these bookings and presentation arrangements.

25. At the present time a play costs approximately \$60,000 to \$100,000 to produce, whereas a musical generally requires from \$200,000 to \$300,000. As much as one-third of the cost may be attributable to expenditures for scenery, props and related items and services. The producer usually does not invest money in his own attraction but finances it almost entirely with risk capital. The producer often incorporates the legitimate attraction as a separate venture and sells shares of stock therein to investors, or he may organize a limited partnership with the investors sharing in the venture. The producer usually begins to share in the profits only after the investors are paid back their total investments, after which the profits are generally divided 50% to the producer and 50% to the investors.

26. When rehearsals are completed, the producer arranges for the presentation of the attraction for a period of one to four weeks in a theatre in one or more try-out towns. Key try-out towns are Boston, Massachusetts; Philadelphia, Pennsylvania; Baltimore, Maryland; and New Haven, Connecticut. Until recently, when its last remaining theatre was converted into a motion-picture house, Washington,

D. C. was also a key try-out town. The reaction of audiences in try-out towns is important in gauging the attraction's financial success on subsequent presentations in New York City and road-show towns.

27. If the try out is satisfactory, the attraction is then presented in a theatre in New York City. To return any profit an attraction must generally run in a New York City theatre for a minimum of twenty weeks; to be considered a hit it must usually play to capacity or near capacity audiences in that city for a full theatrical season. If the New York City run is successful, the producer sends the attraction on tour to road-show towns throughout the United States. This road-show tour, which may be made by one or more companies, is an integral part of the exploitation of the attraction and a substantial part of its profits are so obtained.

28. The defendant UBO acts as middleman between producers and the operators of theatres in try-out and road-show towns. The booking of legitimate attractions involves the fixing of playing dates in various theatres and the cross-country routing of attractions, in a constant stream, to and from theatres in various cities throughout the United States. Although services are performed for both producers and operators, by custom and usage the defendant UBO is regarded as the agent of, and receives payment from, the operator. Generally, the producer and the operator divide the gross theatre admission receipts on a stipulated percentage basis. The defendant UBO usually receives for its services 5% of the operator's share of the gross receipts.

29. With the exception of a few cities a legitimate attraction ordinarily cannot profitably play in any one road-show town for more than a limited period of time, seldom exceeding two weeks. Therefore, successful operation of a theatre in a road-show town requires the presentation of a series of legitimate attractions so scheduled as to keep the theatre as continuously occupied as possible during the theatrical season. The producer, on the other hand, because of the fact that he cannot keep his attraction in any one road-show town for more than a short time, must play in a number of road-show towns during the tour. For a profitable tour, the producer must obtain a series of suitable road-show playing dates so arranged as to minimize lay-offs and travel between engagements. In view of these considerations, playing dates of the producer and operator must be coordinated to permit each to meet his requirements.

30. The defendant UBO, generally before the beginning of each theatrical season, enters into or renews arrangements with operators throughout the United States to act as their agent in the booking of legitimate attractions. A producer seeking bookings consults the

defendant UBO which thereupon examines its various schedules to determine the available open time at theatres suitable for the attraction. Normally, after considerable negotiation with the producer, the defendant UBO "pencils in" playing dates for the attraction and then notifies the operators accordingly. Subsequently contracts are entered into covering the presentation of the attraction at various theatres throughout the United States.

31. Booking in New York City differs from booking in try-out and road-show towns. Independent theatres in New York City are ordinarily booked through direct negotiation between producer and operator. Shubert-operated theatres in New York City are booked by an agent of the Shuberts who is also one of the two booking managers for the defendant UBO.

32. Playing dates for theatres in try-out and road-show towns are generally for a fixed period of time, after which the attraction is moved to another town. On the other hand, in New York City an attraction is booked to run indefinitely, provided it grosses a specified amount each week. This provision is known as a "stop clause." If the attraction grosses less than the minimum in the "stop clause," either party has the option of removing the attraction from the theatre after prescribed notice has been given.

11 33. The operator enters into a contract with the producer to make his theatre (whether located in a try-out or a road-show town or in New York City) available to the producer for a specified legitimate attraction. Usually the operator receives his compensation in the form of a percentage, varying from 20% to 40% of the total gross theatre admission receipts. However, in many instances the operator will insist that the producer guarantee payment of a minimum sum. The operator furnishes the theatre, including light, heat, and a limited number of service personnel, and in conjunction with the producer prepares the legitimate attraction for presentation in the theatre. In addition, the operator may pay all or part of the cost to "take-in" and set up the scenery and paraphernalia, as well as furnish a limited number of stage-hands and musicians. When the engagement is concluded the operator may pay part or all of the cost of "taking-out" the scenery and paraphernalia and preparing same for shipment to the next theatre. The operator may also pay part of the cost for advertising the attraction. The producer, on the other hand, usually must bring with him and furnish all the necessary scenery, costumes, props, and special lighting effects, together with a complete cast. The producer also provides advertising material prior to the presentation of the attraction and must provide personnel in addition to those provided by the operator.

34. Operators outside of New York City are financially dependent upon a steady flow of legitimate attractions. Theatres in try-out

and road-show towns supply a market for legitimate attractions which is of vital importance to the profitable presentation and exploitation of such attractions. Moreover, theatres in road-show towns provide an opportunity for the producer of a popular attraction to have access to the widest possible market.

12

V

*Position of the Defendants in the Business**A. Production*

35. For a number of years the defendants Shuberts and corporations controlled by them engaged in both the production of their own legitimate attractions and the financing of attractions of other producers. At the present time their production activities are concentrated largely in the latter field. The defendant Heiman and corporations controlled by him likewise engage in the financing of the production of legitimate attractions.

36. The defendants, moreover, have entered into various arrangements with the Theatre Guild, Inc., one of the leading producers of legitimate attractions in the United States, which arrangements are approximately as follows: The Guild customarily presents three of its own productions and three outside productions during each theatrical season. Tickets for these attractions are sold on a subscription basis on behalf of the Guild by the American Theatre Society and such sales represent a substantial portion of the box office receipts. This Society, through a play selection committee, also selects those attractions which are to be included in the subscription season of the Guild. The public, in reliance on the Guild's selection of legitimate attractions, pays large sums of money in various cities of the United States for subscriptions therefor. The defendants Shuberts and Heiman own a substantial block of stock in the American Theatre Society, and the defendants Lee Shubert and Heiman comprise two of the four members of its play selection committee. The defendants Shuberts and Heiman have also made substantial investments in Guild productions.

13

B. Booking

37. The defendants Shuberts and Heiman control the booking of legitimate attractions in try-out and road-show towns throughout the United States. Furthermore, the defendants Shuberts control the booking of approximately 50% of the theatres in New York City.

38. Prior to 1932, when the defendant UBO was organized, two booking offices, both located in New York City, were available for the booking of legitimate attractions in try-out and road-show towns. These were the Klaw-Erlanger office, controlled by the

Erlanger family, and the Shubert office, controlled by the Shuberts. Each booked primarily into its own chain of theatres. In or about 1928, the defendant Heiman became a partner in the Erlanger theatre interests, including a share in the Klaw-Erlanger booking office. In 1931 the Shubert Theatre Corporation went into receivership, the defendant Lee Shubert and the Irving Trust Company being appointed receivers. In or about August 1932, the Klaw-Erlanger booking office and the Shubert booking office were merged, the resulting combination being known as the United Booking Office, Incorporated. UBO issued five hundred shares of stock; of these Lee Shubert and the Irving Trust Company, as receivers, obtained 250 shares, and Leonard Bergman, a member of the Erlanger family, obtained the other 250. On May 3, 1933, Heiman acquired 125 shares of this stock from Bergman and on March 17, 1944, the other 125 shares. Prior to this last transfer Heiman represented both his own interests and those of Bergman in UBO. In the interim, the Shuberts organized Select which purchased from the receivers the entire assets of the Shubert Theatre Corporation, including 250 shares of UBO stock. The formal transfer of UBO stock to Select occurred on June 30, 1933. Thus, the stock of UBO is now owned 50% by Heiman and 50% by the Shuberts, through Select.

14 39. For a number of years Heiman has been the president and one of the four directors of UBO. Lee Shubert is vice-president and director. Of the other two officers of UBO, one is an associate of the Shuberts, the other an associate of Heiman. Likewise, of the remaining two directors of UBO, one is a nominee of Heiman, the other a nominee of the Shuberts. UBO also employs two booking managers, Augustus Pitou and Elias Weinstock. Pitou was formerly connected with the Klaw-Erlanger office and is the Heiman representative in UBO. In addition to his booking duties, Pitou has overall supervision of the Heiman-operated theatre in Boston, Massachusetts and of the Heiman-operated theatre in Pittsburgh, Pennsylvania; the latter theatre, the Nixon, was sold in 1948 by Heiman to make way for an office building and is scheduled for demolition in 1950. The other booking manager of UBO, Elias Weinstock, is the Shubert representative in UBO, having occupied that position since 1939 when his predecessor, Jules Murry, died. Weinstock spends approximately half his time booking for UBO and devotes the remainder of his working for the Shuberts. He books legitimate attractions for several Shubert-operated theatres in try-out and road-show towns and for all the Shubert-operated theatres in New York City. He also manages the Shubert-operated Booth Theatre in New York City.

40. In 1932 the defendants adopted a policy whereby UBO entered into franchise agreements with operators of theatres in various road-show towns throughout the United States where the defendants themselves did not operate theatres. Under each of these agreements

the operator appointed UBO exclusive booking agent for the booking of legitimate attractions into the theatre and agreed to pay UBO a fee of 5% of his share of the gross receipts from all legitimate attractions presented at the theatre during the period of the franchise. The operator usually agreed not to transfer his interest in the theatre without consent of UBO and UBO in return agreed to use its best efforts to book for the theatre during the period covered by the franchise. It was also generally understood by the parties that if UBO granted a franchise to an operator in a particular town, it would not thereafter, during the period of the franchise, grant a second franchise to another operator in the same town. At the outset franchises covered periods varying from one to five years. Subsequently, UBO limited these franchises to a period of one year and usually negotiated new ones or renewals prior to each theatrical season. In or about 1946 UBO discontinued formal franchise agreements and adopted in lieu thereof a system of listings, whereby it was tacitly understood between the parties that they would continue the previous arrangements without a written contract.

C. Presentation

41. The defendants, as will hereinafter be described, are the only operators of theatres in virtually all key try-out towns and in several important road-show towns. In addition, approximately 50% of all the theatres in New York City are Shubert-operated theatres.

42. The defendants operate or participate in the operation of approximately 40 theatres in eight States. The distribution of these theatres is as follows:

<i>City</i>	<i>No. of Theatres</i>
Baltimore, Md.	1
Boston, Mass.	6
Chicago, Ill.	7
Cincinnati, Ohio	1
Detroit, Mich.	2
Los Angeles, Calif.	1
New York, N. Y.	17
Philadelphia, Pa.	4
Pittsburgh, Pa.	1
Total	40

16 A. *Baltimore.* The only theatre in this city at the present time is Ford's Theatre, which is leased and operated by UBO. Select, through a wholly-owned subsidiary, guarantees 50% of the obligations of UBO under the lease, and the other 50% is guaranteed by IAB.

B. *Boston*. There are six theatres in this city, all of which are controlled by the defendants. Four are Shubert-operated theatres as follows: Copley, Opera House, Plymouth, Shubert. Heiman, through LAB, operates the Colonial. In addition, the Shuberts and Heiman jointly operate the Wilbur Theatre.

C. *Chicago, Illinois*. There are nine theatres in this city, all but two of which are operated by the defendants. Six are Shubert-operated theatres, as follows:

Blackstone
Great Northern
Harris
Seiwyn
Shubert
Studebaker

Heiman, through LAB, operates the Erlanger Theatre.

D. *Cincinnati, Ohio*. The only theatre in this city is the Cox, which is a Shubert-operated theatre.

E. *Detroit, Michigan*. There are three theatres in this city. Of these, the Shuberts have an interest in the operation of two, namely the Cass and the Shubert-Lafayette.

F. *Los Angeles, California*. The only theatre in this city is the Biltmore, which is a Heiman-operated theatre.

G. *New York City, New York*. There are thirty-two theatres in this city. Of these, at least fifteen are Shubert-operated theatres, as follows:

Barrymore	Imperial
Booth	Majestic
Broadhurst	National
Broadway	Plymouth
Century	Royale
Cort	St. James
Golden	Shubert
	Winter Garden

17 The Shuberts also own one-third of the stock of the corporation which operates the Music Box Theatre, and have the exclusive booking rights for, and a one-third interest in the Lyceum Theatre.

H. *Philadelphia, Pennsylvania*. There are four theatres in this city, all of which are Shubert-operated theatres. These theatres are the Forrest, Locust, Shubert and Walnut Street.

I. *Pittsburgh, Pennsylvania*. The only theatre in this city is the Nixon, which is a Heiman-operated theatre. The theatre was sold in 1948 to make way for an office building, and it is scheduled for demolition in 1950.

43. In New Haven, Connecticut, there is only one theatre, the Shubert, which for a number of years prior to 1941 was a Shubert-operated theatre. It became an affiliated theatre in 1941 when a new corporation took over the lease and operation of the theatre under an agreement with a subsidiary of Select, whereby the operator agreed to accept only attractions booked through said subsidiary. This agreement was renewed in 1946 for a period of five years.

44. In Washington, D. C. there is at the present time no theatre. For a number of years two theatres in this city were available for the presentation of legitimate attractions, the Belasco and the National, both controlled by the defendants. By design and agreement of the defendants the Belasco was kept "dark" for a number of years so as to eliminate competition. In 1948 the defendant Heiman converted the National into a motion-picture house, despite the fact that Washington, D. C. is acknowledged to be one of the most desirable cities in the United States for the presentation of legitimate attractions. Other persons desiring to operate a theatre in Washington, D. C. have been unable to obtain a commitment from the defendants with respect to securing legitimate attractions, hence, making it difficult, if not impossible, for a person independent of the defendants to operate a theatre in Washington, D. C.

45. In Toledo, Ohio, there is only one theatre, the Town Hall, which is owned by the Shuberts. In 1947, this theatre became an affiliated theatre when it was leased by the Shuberts under an agreement granting exclusive booking rights to UBO.

VI

Interstate Commerce

46. The business of producing legitimate attractions for presentation in try-out towns, New York City, and road-show towns involves the securing of actors, scenery, costumes, appropriate lighting, music and other paraphernalia, then the welding of all the parts into presentable form through rehearsals, generally in New York City. When the rehearsals are completed, the entire cast and the scenery, costumes, lighting, music, and other paraphernalia are transported across State lines to a key try-out town such as Boston, Massachusetts; Philadelphia, Pennsylvania; Baltimore, Maryland; or New Haven, Connecticut. The try-out performances are an essential part of the fashioning of a successful vehicle for presentation in New York City and in road-show towns. If the attraction is successful in the try-out town, the cast and the scenery, costumes, lighting, music and other paraphernalia are then transported to New York City for presentation. If that presentation is successful, the actors and the above-mentioned essential and costly equipment are then transported across various State lines on a road-show tour

to various cities in the United States. The road-show tour of a successful legitimate attraction is an integral part of the over-all presentation.

47. As a necessary part of the fulfillment of booking contracts, legitimate attractions must go from State to State, staging performances here and there and fulfilling their contracts as much by the interstate movement as by the acting.

48. In the usual course of producing, booking, and presenting legitimate attractions there is a continuous flow of applications, letters, memoranda, communications, money, checks, drafts and other media of exchange from operators and other persons in various States of the United States across State lines to the defendants in New York City. Likewise, there is a continuous flow of memoranda, letters, commitments, contracts, and communications from the home offices of the defendants in New York City across State lines to operators and other persons in various States of the United States.

49. In the course of producing, booking and presenting legitimate attractions, there is a constant, continuous stream of trade and commerce between the States of the United States, consisting of the assemblage of personnel and property for rehearsals, the transportation of said personnel and property to various cities throughout the United States, the making and performing of contracts under which attractions are routed and presented in various States of the United States, and the transmission of applications, letters, memoranda, communications, commitments, contracts, money, checks, drafts and other media of exchange across State lines.

VII

Offenses Charged

50. The defendants for many years last past, have been and now are engaged in a combination and conspiracy in restraint of the aforesaid interstate trade and commerce in the production, booking and presentation of legitimate attractions, and have combined and conspired to monopolize, and have attempted to monopolize and have monopolized the aforesaid interstate trade and commerce in the

booking of legitimate attractions throughout the United States
20 and in the presentation of legitimate attractions in Baltimore,

Maryland, Boston, Massachusetts; Chicago, Illinois; Cincinnati, Ohio; Detroit, Michigan; Los Angeles, California; New York City, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Washington, D. C., in violation of Sections 1 and 2 of the Sherman Act. The defendants threaten to continue such offenses, and will continue them, unless the relief hereinafter prayed for in this complaint is granted.

51. The aforesaid combinations and conspiracies to unreasonably restrain and to monopolize trade and commerce, the attempts to monopolize and the monopolizations of trade and commerce have consisted of a continuing concert of action among the defendants, the substantial terms of which have been that the defendants: (a) compel producers to book their legitimate attractions exclusively through the defendants; (b) exclude others from booking legitimate attractions; (c) prevent competition in the presentation of legitimate attractions; (d) discriminate in favor of their own productions with respect to booking and presentation; and (e) combine their power in booking and presentation in order to maintain and strengthen their domination in each of these fields.

52. Pursuant to said combinations and conspiracies, attempts to monopolize and monopolizations, the defendants have done the things they agreed to do, by the following means, among others:

(a) Conditioned their investments in the productions of legitimate attractions by others upon agreements by the producers to book each of those attractions exclusively through the defendants;

(b) Booked substantially all legitimate attractions produced by the defendants;

(c) Forced producers to grant to the defendants the exclusive right to book the legitimate attractions of said producers for an entire theatrical season;

21 (d) Conditioned the booking of legitimate attractions into theatres in try-out towns upon agreements by the producers to book each of those attractions exclusively through the defendants thereafter;

(e) Conditioned the booking of legitimate attractions into Shubert-operated theatres in New York City upon agreements by the producers to book each of those attractions exclusively through the defendants thereafter;

(f) Coerced producers who had booked independently of the defendants to pay penalties or to accept unfavorably discriminatory booking terms, as a condition of obtaining bookings through them;

(g) Entered into agreements with operators whereby said operators agreed to present only attractions booked through the defendants and defendants agreed not to book for competing operators;

(h) Excluded legitimate attractions booked independently of the defendants from theatres operated by them and from affiliated theatres;

(i) Excluded legitimate attractions booked through the defendants from theatres competing with affiliated theatres or with those operated by the defendants;

(j) Harassed operators of competing theatres;

(k) Coerced and intimidated independent theatre operators located in towns where the defendants operated theatres, or where they desired to operate theatres, to relinquish control of their theatres or a share of the profits thereof, by expressed or implied threats to deprive them, by virtue of the defendants' control of booking, of access to legitimate attractions;

(l) Acquired control of the operation of competing theatres.

VIII

Effects

53. The concerted action of the defendants pursuant to and in furtherance of the violations of law alleged in this complaint have had, among others, the following effects:

(a) Producers have been forced to book exclusively with the defendants, on non-competitive terms, in order to obtain access to suitable theatres;

(b) Persons have been denied the right to engage in the business of operating a booking office in competition with the defendants;

(c) Operators of independent theatres in cities where the defendants operate theatres, or where affiliated theatres are located, have been systematically excluded from obtaining legitimate attractions;

(d) In many cities where the defendants operate theatres, or where affiliated theatres are located, operators of independent theatres have been forced out of the business of presenting legitimate attractions;

(e) Persons have been denied the right to engage in the business of presenting legitimate attractions in cities where the defendants operate theatres, or where affiliated theatres are located;

(f) In cities where the defendants operate theatres, or where affiliated theatres are located, the public has been deprived access to legitimate attractions and the benefits which flow from free enterprise and open competition;

(g) The interstate commerce in production, booking, and presentation has been unreasonably restrained and the interstate commerce in booking and presentation has been monopolized.

Prayer

WHEREFORE, plaintiff prays:

(1) That the Court adjudge and decree that the defendants, and each of them, have combined and conspired to unreasonably restrain and to monopolize trade and commerce, have attempted to monopolize and have monopolized trade and commerce, as hereinbefore alleged, in violation of Sections 1 and 2 of the Sherman Act.

(2) That the defendants herein, their subsidiaries, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, their subsidiaries, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combinations and conspiracies to unreasonably restrain and to monopolize trade and commerce, the attempts to monopolize and the monopolizations of trade and commerce, as hereinbefore alleged, in the production, booking and presentation of legitimate attractions, and any similar conspiracies, attempts to monopolize, or monopolizations.

(3) That the Court adjudge and decree that the integration by the defendants of the production, booking and presentation branches of the legitimate theatre business has been used unlawfully as an instrumentality of monopoly and restraint upon interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

(4) That the Court adjudge and decree that the defendants have used their interest in and control of presentation and booking to restrain trade and commerce in the production of legitimate attractions in violation of Section 1 of the Sherman Act.

(5) That the Court adjudge and decree that the defendants have used their interest in and control of presentation and their interest in production to restrain and to monopolize trade and commerce in the booking of legitimate attractions in violation of Sections 1 and 2 of the Sherman Act.

(6) That the Court adjudge and decree that the defendants have used their interest in and control of presentation and booking and their interest in production to restrain and to monopolize trade and commerce in the presentation of legitimate attractions in violation of Sections 1 and 2 of the Sherman Act.

(7) That the Court

(a) order and direct the defendants to divest themselves of all interest in either the booking branch or the presentation branch of the business, under terms and conditions which will assure that no divested interest or no retained interest will be used in restraint of trade, and retain jurisdiction for the effectuation of its order;

(b) perpetually enjoin and restrain each of the defendants from acquiring any interest in that branch of the business so relinquished; and

(c) order and direct the defendants, and each of them, (in the event that the Court permits the defendants, or any of them, to engage in presentation) to divest themselves of all interest and ownership in such theatres as may be necessary to dissipate the effects of the unlawful activities hereinbefore alleged, and to restore competition in such trade and commerce; and that the Court perpetually enjoin and restrain said defendants from acquiring any interest in any theatre except upon a showing to the Court that such acquisition will not unreasonably restrain the trade and commerce in the presentation of legitimate attractions in any section or community, or tend to create a monopoly in that line of commerce.

25-67 (8) That the plaintiff have such other relief as the Court may deem appropriate in order to prevent restraints of trade and commerce, attempts to monopolize and monopolizations in any branch of the business in which defendants may hereafter be engaged.

(9) That the plaintiff recover its costs herein.

Dated: Feb. 21, 1950.

(S.) J. HOWARD McGRATH,
Attorney General.

(S.) HERBERT A. BERGSON,
Assistant Attorney General.

(S.) IRVING H. SAYPOL,
United States Attorney.

(S.) MELVILLE C. WILLIAMS,
Chief, New York Office.

(S.) RICHARD K. DECKER,

(S.) HERBERT N. MALETZ,

(S.) HAROLD LASSER,

(S.) HENRY M. STUCKEY,

(S.) VICTOR A. ALTMAN,

(S.) ESTELLA L. BALDWIN,

Attorneys for the United States.

68-70 In the United States District Court for the Southern
District of New York

[Title omitted]

MOTION TO DISMISS COMPLAINT—Filed December 10, 1953

Defendants move the Court for judgment dismissing the complaint for the reasons (1) that the Court does not have jurisdiction of the subject matter of the action and (2) that the complaint does not state a claim upon which relief can be granted.

Dated November 24, 1953.

CRAVATH, SWAINE & MOORE,
By ALFRED McCORMACK,
a member of the Firm,
Attorneys for Defendants,
15 Broad Street,
New York 5, N. Y.

To:

PHILIP MARCUS, Esq.,
Special Assistant to
the Attorney General.
_____,
United States Attorney,
Southern District of New York.
_____,
Clerk of the Court.

71 In the United States District Court for the Southern
District of New York

[File endorsement omitted]

Civil Action No. 56-72

UNITED STATES OF AMERICA, PLAINTIFF,
against

LEE SHUBERT, JACOB J. SHUBERT, MARCUS HEIMAN, UNITED BOOK-
ING OFFICE, INCORPORATED, SELECT THEATRES CORPORATION, L.A.B
AMUSEMENT CORPORATION, DEFENDANTS.

OPINION—December 30, 1953

PHILIP MARCUS, ESQ.,
*Special Assistant to the Attorney General,
Attorney for Plaintiff.*
KLEIN & WEIR, ESQS.,
*Attorneys for defendants, Lee Shubert, Jacob
J. Shubert and Select Theatres Corporation.*
CRAVATH, SWAINE & MOORE, ESQS.,
*Attorneys for defendants, Marcus
Heiman and United Booking Office, Inc.*
LIPPER, SHINN & KEELEY, ESQS.,
*Attorneys for defendant,
L.A.B. Amusement Corporation.*
KNOX, C. J.

December 1953.

72-74 KNOX, C. J.

In principle, I can see no valid distinction between the facts of this case and those which were before the Supreme Court in the cases of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U. S. 200, and *Toolson v. New York Yankees, et al*, decided by the Supreme Court on November 9, 1953.

Upon the authority of these adjudications the complaint in the above entitled action will be dismissed.

December 30, 1953.

JNO. C. KNOX,
Chief Judge.

75 IN THE UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Date	Filings—Proceedings	Attorneys	
		Pltf.	Deft.
Feb. 21-50	Filed Complaint and Issued Summons.		
Mar. 2-50	Filed Summons & Return—Served Gerson Werner, Atty. for Lee Shubert, Jacob J. Shubert and Select Theatres Corp. on 2-21-50; Served Marcus Heiman on 2-21-50; Served Marcus Heiman, Pres. for United Booking Office, and L. A. B. Amusement Corp. on 2-21-50.		
Mar. 10-50	Filed Notice of Appearance (Deft. United Booking Office, Inc.)		K&W CS&M
Mar. 10-50	Filed Notice of Appearance (Deft. Marcus Heiman).		CS&M
Mar. 15-50	Filed Stip. & Order extending time to answer to 4-22-50, McGohey, J.		
Mar. 23-50	Filed Notice of Appearance (Deft. L. A. B. Amusement Corp.)		LS&K
Apr. 24-50	Filed Stip. & Order extending time to answer to 6-1-50, Clancy, J. (Lee Shubert, et al).		
May 31-50	Filed Answer of Defts. Lee Shubert, Jacob J. Shubert and Select Theatres Corp.		K&W.
June 1-50	Filed Answer of Deft. L. A. B. Amusement Corp.		LS&K.
June 1-50	Filed Answer of Deft. United Booking Office, Inc.		CS&M.
June 1-50	Filed Answer of Deft. Marcus Heiman.		CS&M.
76			
July 26-50	Filed Affidvt. of mailing of Notice of deposition to Klein & Weir, et al.	x	
Aug. 9-50	Filed Stip. & Order of taking deposition of Stair, McGohey, J.		
Aug. 23-50	Filed note of issue, show cause to seal deposition of E. D. Stair & hold same, etc. ret. 8-29-50.		
Aug. 23-50	Filed show cause order to seal deposition of E. D. Stair & hold same, etc. ret. 8-29-50.		
Sept. 5-50	Filed Stip. & Order continuing return date of show cause order (dated 8-23-50) to 9-26-50, Noonan, J.		
Sept. 6-50	Filed Interrog. of Lee Shubert, et al.		
Sept. 21-50	Filed stip & order extending time to answer interrogs to 10-22-50. Ryan, J.		x
Oct. 5-50	Filed Deposition of Edward Douglas Stair from Detroit, Mich. (in vault Room 602) (mailed Notice).		
Oct. 5-50	Filed Pltf's Interrog. to defts. Lee Shubert, et al.	x	
Oct. 5-50	Filed Pltf's Interrog. to defts. Heiman, et ano.	x	
Oct. 5-50	Filed Pltf's Interrog. to defts. United Booking Office.	x	
Oct. 10-50	Memo. End. on Show Cause Order to seal deposition of Stair filed 8-23-50, Motion withdrawn as agreed upon between counsel, Goddard, J.		
Oct. 13-50	Filed Pltf's Objections to certain of defts' interrog.	x	
Oct. 16-50	Filed Stip. & Order extending time of defts. to object to interrog. to 11-10-50, etc., Bondy, J.		
Oct. 16-50	Filed Consent Order vacating stay and impounding directed in show cause order of 8-23-50 (to seal deposition of Stair), Bondy, J. Mailed Notice of Entry 10-17-50.	x	

Date	Filings—Proceedings	Attorneys	
		Pltf.	Deft.
Oct. 17-50	Filed Note of Issue, Motion for hearing on pltf's and defts' Objections to Interrog.—Ret. 12-19-50.	x	
Nov. 22-50	Filed Pltf's Answers to Defts' Interrog.	x	
Nov. 22-50	Filed Four folders containing documents in connection with pltf's answers to defts' interrog.		
Dec. 13-50	Filed Stip. & Order adjourning hearing on pltf's objections to interrog. to 1-23-51, Sugarman, J.		
Dec. 19-50	Filed Note of Issue, Motion to produce—Ret. 1-23-51.		
Jan. 17-51	Filed Stip. & Order adjourning hearing on pltf's objections to interrog. to 2-13-51, Coxe, J.		
Feb. 21-51	Filed Stip. & Order as to pltf furnishing copy of documents re: rulings of Court on pending objections of pltf. to interrog. (see order) Leibell, J. (returned to Judge Leibell as noted on Order).		
Mar. 19-51	Filed Stip. & Order extending time to answer to interrog. to 5-1-51, McGohey, J.		
77			
Apr. 27-51	Filed Affdvts. & Notice of Motion to produce and permit inspection.		K&W
Apr. 27-51	Filed Claim of privilege (re: information sought by defts. interrog.).	x	
Apr. 27-51	Filed Opinion #19,294 (see opinion) Leibell, J.		
May 1-51	Filed Stip. & Order extending time of defts. Heiman, et al to answer interrog. to 5-28-51, Weinfeld, J.		
May 31-51	Filed Stip. & Order extending time of defts. Heiman, et al to answer interrog. to 6-14-51, etc., S. H. Kaufman, J.		
May 29-51	Filed Note of Issue—Motion to reargue Defts. motion to produce—Ret. 6/8/51.		
July 5-51	Filed Memorandum Opinion #19,430 (see opinion) Leibell, J.		
July 5-51	Filed Stip. & Order re: withdrawing motions of defts. to reargue, etc. (see order) Leibell, J.		
July 5-51	Filed Order requiring pltf. to further answer deft's interrog. and to produce certain papers, Leibell, J., Mailed Notice of Entry 7-6-51.	x	
July 5-51	Filed Unsigned Order.		CS&M
July 23-51	Filed Pltf's Answers to certain interrog. for motion to produce.		
July 23-51	Filed Pltf's Further Answers to defts' Interrog.		
July 23-51	Filed Documents furnished in connection with Pltf's Further Answers to Defts. Interrog.		
Oct. 16-52	Filed Notice of Motion to strike affirmative defenses—Ret. 10-28-52.	x	
Oct. 22-52	Filed Notice of Motion to strike motion of pltf. under Rule 12F FRCP as not timely—Ret. 10-28-52.		K&W
Nov. 12-52	Filed Pltf's suppl. interrog. to deft. United Booking Office.		
Nov. 12-52	Filed Pltf's suppl. interrog. to deft. Lee Shubert, et al.		
Nov. 12-52	Filed Pltf's suppl. interrog. to deft. Heiman, et ano.		

Date	Filings—Proceedings	Attorneys	
		Pltf.	Deft.
Nov. 14-52	Memo. End. on Motion filed 10-16-52; (see memo.) Sugarman, J. (See 2nd Memo. End., entered 3-26-53).		
Nov. 25-52	Filed pltf's memorandum in support of motion to strike.		
Nov. 27-52	Filed Order denying deft's motion to strike affirmative defenses, etc., Sugarman, J. Mailed Notice of Entry 11-26-52.	x	
Dec. 5-52	Filed Stip. & Order extending time to answer suppl. interrog., Sugarman, J. (Lee Shubert, et al).		
Dec. 5-52	Filed Interrog. to Theatre Guild, Inc.	x	
Dec. 5-52	Filed Affidvt. of service of interrog. to Theatre Guild & Amer. Theatre.	x	
Dec. 5-52	Filed Interrog. to Amer. Theatre Soc.	x	
Dec. 5-52	Filed Copies of Interrog. to Theatre Guild & Amer. Theatre & Notice thereof.	x	
Dec. 18-52	Filed Photostated list of theatres, towns and states.		
Dec. 19-52	Filed Stip. & Order extending time to answer interrog. to 12-22-52, Weinfeld, J.		
78			
Dec. 22-52	Filed Answers of Defts. Heiman and LAB Amusement to interrog.		
Dec. 29-52	Filed Notice as to including statement as part of pretrial order.		
Jan. 6-53	Filed Answer of Defts. Lee Shubert, et al to pltf's suppl. interrog.		
Jan. 19-53	Filed Answers of Deft. United Booking Office, Inc. to pltf's suppl. interrog.		x
Jan. 23-53	Pre-trial before Bondy J. & Adjd pending decision on motion.		
Feb. 4-53	Filed Transcript of Record of Proceedings of Jan. 23, 1953.		
Mar. 16-53	Filed Pltf's requests for admissions.		
Mar. 16-53	Filed Stip. & Order removing action presently second on Civil Non-Jury Reserve Cal., etc., Knox, Ch. J.		
Mar. 16-53	Filed Notice of Motion for inspection—Ret. 3-19-53.	x	
Mar. 26-53	Filed Opinion #20,396 re: pltf's motion to strike defenses (see opinion) Sugarman, J.		
Mar. 26-53	2nd Memo. End. on Motion filed 10-22-52: This decision amended in last paragraph by correcting motion numbers, Sugarman, J. (First memo. end. previously attached to motion filed 10-16-52).		
Apr. 2-53	Memo. End. on Motion filed 3-16-53: Motion withdrawn, I. R. Kaufman, J.		
Apr. 13-53	Filed Order granting and denying motion to strike affirmative defenses Sugarman, J., Mailed Notice of Entry 4-14-53.	x	
Apr. 15-53	Filed Copy of Order dated 4-10-53 with Notice of Entry.	x	
Apr. 15-53	Filed deft's answers to pltf's requests for admissions.		
Apr. 16-53	Filed Stip. & Order on procedure as to proof and authenticity of documents Dimock, J.		
Apr. 16-53	Filed Stip. & Order to retore action Non-Jury reserve cal., Knox, Ch. J.		

Date	Filings—Proceedings	Attorneys	
		Pltf.	Def.
Apr. 30-53	Filed Notice to include statement in pre-trial order, as indicated.		
May 1-53	Filed Def't's answers to pltf's requests for admissions.		
May 5-53	Filed Notice of Motion to designate a judge for purpose of hearing all motions and matters preliminary to trial—Motion denied, Knox, Ch. J.	x	
June 19-53	Filed Transcript of Record of Proceedings of May 5, 1953.		
June 23-53	Pre-trial before Bondy J. & Adj'd to 7/7/53.		
June 26-53	Filed Transcript of Record of Proceedings of June 23, 1953.		
June 30-53	Filed Transcript of Record of Proceedings of May 14, 1953.		
July 7-53	Pretrial before Bondy, J.—hearing held & adj. to 10-9-53.		
July 14-53	Filed affdvt. & notice of motion declaring defts. waived rights, etc.—Ret. 7-21-53.		
July 23-53	Filed consent & order withdrawing motion for an order with respect to stip. entered into 1/23/53 and made an order of this Court 4/16/53, and permitting inspection of those documents indicated—Murphy, J.		
July 27-53	Filed Transcript of Record of Proceedings of July 7, 1953.		
79			
Aug. 19-53	Filed Notice of Motion that pltf. may offer proof without amending complaint or pltf's answers to interrog. or alternatively to amend complaint Ret. 8-25-53.		
Aug. 25-53	Memo. End. on Motion filed 8-19-53: Motion denied without prejudice, Noonan, J.		
Aug. 25-53	Filed Affdvt. of John J. O'Connell.		
Aug. 25-53	Filed Affdvt. of Milton R. Weir.		
Sept. 4-53	Filed Unsigned Order.	USA	
Sept. 4-53	Filed Order denying pltf's motion to amend complaint, etc., Noonan, J. Mailed notice of entry 9-8-53.		K&V
Sept. 9-53	Filed supplement & amendment to pltf's answers to interr.		
Sept. 17-53	Filed copy of letter dated 9-16-53 and signed by Klein & Weir, Cravath Swaine & Moore and Lipper Shinn & Keeley addressed to Hon. Stanley N. Barnes, Asst. Atty. Gen., Wash., D. C. re: returning copies of Supplement and Amendment to pltf's answers to interrog.		
Sept. 18-53	Filed affdvt & notice of motion to reargum motion to amend—ret. 9-29-53.		
Sept. 29-53	Memo endorsed on motion filed 9/18/53. Referred to Noonan, J., Holtzoff, J.		
Sept. 30-53	Filed opposing affidavit.		
Sept. 29-53	Filed affidavit of J. J. O'Connell.		
Oct. 8-53	Pre-trial before Bondy, J. & adjourned.		
Oct. 16-53	Filed motion papers re: to designate a judge to hear all motions. Ret. 10/22/53.		
Nov. 5-53	Memo. End. on Motion filed 9-18-53: Reargument granted; constrained to adhere to orig. ruling, etc. (see memo.) Noonan, J.		

Date	Filings—Proceedings	Attorneys	
		Pltf.	Deft.
Nov. 10-53	Filed Pltf's Requests for Admissions.		
Nov. 16-53	Filed Unsigned Order.		
Nov. 16-53	Filed Order granting motion for reargument and on such reargument original order filed 9-4-53 adhered to, Noonan, J. Mailed notice of entry 11-17-53.	x	CS&M
Nov. 24-53	Pre-trial before Ryan, J. Order to enter.		
Nov. 24-53	Filed Pre-trial Order, Ryan, J.		
Dec. 4-53	Filed Transcript of Record of Proceedings of Oct. 8, 1953.		
Dec. 4-53	Filed Transcript of Record of Proceedings of Nov. 5, 1953.		
Dec. 4-53	Filed Transcript of Record of Proceedings of Oct. 23, 1953.		
Dec. 4-53	Filed Stip. & Order extending time of defts. to comply with pltf's requests for Admissions to 12-11-53, Bondy, J.		
Dec. 9-53	Filed Transcript of Record of Proceeding of Nov. 24, 1953.		
Dec. 10-53	Filed Motion to dismiss (taken to Judge Knox).		CS&M
Dec. 15-53	Filed Stip. & Order extending time to comply with pltf's requests for Admission to 12-28-53, Clancy, J.		
80			
Dec. 30-53	Filed Opinion #20,872 Complaint Dismissed, Knox, Ch. J.		
Dec. 30-53	Filed Affdvt. of Milton R. Weir.		
Dec. 30-53	Filed Stip. & Order extending time to comply with pltf's Requests for Admissions to 1-4-54, Dimock, J.		K&W
Feb. 19-54	Filed Citation, (Knox, Ch. J.) Petition for Appeal, Order allowing appeal, (Knox, Ch. J.) Statement calling attention to provisions of Supreme Court Rule 12(3), Assignment of Errors and Prayer for Reversal, Statement as to Jurisdiction and Praecipe. Mailed notice of entry 2-19-54.	USA	
Feb. 19-54	Filed Proof of service of papers filed 2-19-54.	USA	
Mar. 6-54	Filed Motion to affirm (re: appeal to Supreme Court of U. S.).		
Mar. 10-54	Filed Affdvt. of service re: motion to affirm.		
Mar. 11-54	Filed Stip. & Order substituting Klein & Lund in place of Klein & Weir as attys. for defts. Jacob J. Shubert and Select Theatres Corp.		K&L
Mar. 11-54	Filed Stip. & Order substituting Klein & Lund in place of Klein & Weir, as attys. for deft. United Booking Office, Inc.		
Mar. 17-54	Filed Stip. & Order substituting annexed duplicate complaint (original filed 2-21-50) Bondy, J.		
Mar. 17-54	Certified Record on Appeal to U. S. Sup. Court.		
81-82			

LIST OF ATTORNEYS FOR DEFENDANTS

3-10-50	Cravath, Swaine & Moore	15 Broad St. (5) (6-1-50)
3-10-50	Klein & Weir	1440 Bway. (18)
5-31-50	Kelin & Weir	1440 Bway.
3-23-50	Lipper Shinn & Keeley	527 Fifth Ave. (17) (6-1-50)

83 In the United States District Court for the Southern
 District of New York

[Title omitted]

PETITION FOR APPEAL—February 18, 1954

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final decree of this Court entered on the thirtieth day of December, 1953, does hereby pray and appeal from said final decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

STANLEY N. BARNES,
Assistant Attorney General.

CHARLES H. WESTON,
*Special Assistant to the
Attorney General.*

Dated this 18th day of February, 1954.

84 In the United States District Court for the Southern
 District of New York

[Title omitted]

ORDER ALLOWING APPEAL—February 18, 1954

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on the thirtieth day of December, 1953, and having also made and filed its petition for appeal, assignment of errors and prayed for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

JNO. C. KNOX,
United States District Judge.

Dated this 18th day of February, 1954.

85 STATEMENT CALLING ATTENTION TO THE PROVISIONS OF SUPREME COURT RULE 12 (3) (Omitted in printing)

86 Citation in usual form showing service on Klein, Weir, et al. Omitted in printing.

87 In the United States District Court for the Southern District of New York

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—February 18, 1954

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final judgment of the district court on December 30, 1953, in the above-entitled cause, and says that in the entry of the final judgment the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that, on the facts alleged, there is no valid distinction between this case and the *Federal Baseball* case (259 U.S. 200) and the *Toolson* case (346 U.S. 356).

2. The court erred in holding that the business of producing, booking and presenting, on a multi-state basis, stage attractions performed by professional actors is not within the scope of the Sherman Act.

3. The court erred in adjudging that the complaint fails to state a claim upon which relief can be granted.

4. The court erred in entering judgment dismissing the complaint.

88 Wherefore, plaintiff prays that the final judgment of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as to the court may seem just and proper.

STANLEY N. BARNES,
Assistant Attorney General.

CHARLES H. WESTON,
*Special Assistant to the
Attorney General.*

Dated this 18th day of February, 1954.

89 In the United States District Court for the Southern
District of New York

[Title omitted]

PRAECIPE—February 18, 1954

To: The Clerk, United States District Court,
Southern District of New York.

The appellant hereby directs that, in preparing the transcript of the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Complaint.
2. Answers of all defendants.
3. Defendants' motion to dismiss.
4. Opinion on motion to dismiss.
5. Order of dismissal entered December 30, 1953.
6. Copy of all docket entries.
7. Petition for Appeal.
8. Order Allowing Appeal.
9. Citation on Appeal.
10. Assignment of Errors.
11. Statement of Jurisdiction of the Supreme Court of the United States.
12. Statement of Appellant Calling Attention to Rule 12(3) of the Rules of the United States Supreme Court.
- 90-92 13. Proof of Service.
14. This Praecipe.

STANLEY N. BARNES,
Assistant Attorney General.

CHARLES H. WESTON,
*Special Assistant to the
Attorney General.*

Dated this 18th day of February, 1954.

93-95 Proof of Service (omitted in printing)

96 Clerk's Certificate to foregoing transcript omitted in
printing.

97 In the Supreme Court of the United States

October Term, 1953

No. 647

UNITED STATES OF AMERICA, APPELLANT

v.

LEE SHUBERT, ET AL.

STIPULATION AS TO PRINTING OF THE RECORD—Filed April 6, 1954

The parties to the above-entitled cause hereby stipulate as follows:

1. That the Clerk of this Court print the entire record in this cause as filed in this Court pursuant to appellant's praecipe to the clerk of the United States District Court for the Southern District of New York, except Items 2, 9, 11, 12, and 13 of said praecipe.

2. That any portion of the record on appeal on file with this Court which has not been printed may be referred to by any party in its brief or oral argument to the same extent that if such matter had been printed.

SIMON E. SOBELOFF,
Solicitor General.

ALFRED McCORMACK,
Attorney for the Appellees.

April 5, 1954.

98-99 In the Supreme Court of the United States

October Term, 1953

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON—Filed April 6, 1954

Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

SIMON E. SOBELOFF,
Solicitor General.

April 5, 1954.

100 [File endorsement omitted.]

101-102 Supreme Court of the United States

No. 647 —, October Term, 1953

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—April 26, 1954

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Mr. Justice Jackson took no part in the consideration or decision of this question.